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7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-172

12 **KEVIN WILLIAM KISTLER**  
631 Orange Grove Ave., Apt. Q  
Burbank, CA 91501

**ACCUSATION**

13 Registered Nurse License No. 589345

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed, RN ("Complainant") brings this Accusation solely in her  
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),  
20 Department of Consumer Affairs.

21 2. On or about October 15, 2001, the Board issued Registered Nurse License Number  
22 589345 to Kevin William Kistler ("Respondent"). Respondent's registered nurse license was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on January  
24 31, 2011, unless renewed.

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## STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct. . .

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . .

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022. . .

7. Code section 4060 states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,

1 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers  
3 correctly labeled with the name and address of the supplier or producer.

4 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
5 physician assistant, or a naturopathic doctor, to order his or her own stock of  
6 dangerous drugs and devices.

7 8. Health and Safety Code section 11173, subdivision (a), states, in pertinent part:

8 No person shall obtain or attempt to obtain controlled substances, or procure or  
9 attempt to procure the administration of or prescription for controlled substances, (1)  
10 by fraud, deceit, misrepresentation, or subterfuge . . .

### 11 COST RECOVERY

12 9. Code section 125.3 provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licensee found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

### 16 CONTROLLED SUBSTANCES AT ISSUE

17 10. **Meperidine**, a derivative of pethidine, is a Schedule II controlled substance as  
18 designated by Health & Safety Code section 11055, subdivision (c)(17).

19 11. **Morphine** is a Schedule II controlled substance as designated by Health and Safety  
20 Code section 11055, subdivision (b)(1)(M).

### 21 FIRST CAUSE FOR DISCIPLINE

#### 22 (Criminal Conviction)

23 12. Respondent is subject to disciplinary action pursuant to Code section 2761,  
24 subdivision (f), in that he was convicted of a crime which is substantially related to the  
25 qualifications, functions, and duties of a registered nurse, as follows: On or about March 17,  
26 2005, in the criminal proceeding titled *People v. Kevin William Kistler* (Sup. Ct. Los Angeles  
27 County, 2005, No. 4CR11635), Respondent was convicted by the Court on his plea of nolo  
28 contendere to one misdemeanor count in violation of Penal Code section 487, subdivision (a)  
(grand theft – property over \$400). The incident upon which the conviction is based occurred on  
approximately May 19, 2004.

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**SECOND CAUSE FOR DISCIPLINE**

**(Diversion and Possession of Controlled Substances)**

13. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that on or about and between approximately November 2003, and May 25, 2004, while employed as a registered nurse at Los Angeles County USC Medical Center ("LACUMC") in Los Angeles, California, he did the following:

**Diversion of Controlled Substances:**

a. On or about and between approximately November 2003, and May 25, 2004, Respondent obtained the controlled substances Morphine and Meperedine by fraud, deceit, misrepresentation, or subterfuge, in violation of Health & Safety Code section 11173, subdivision (a), as follows:

1. On or about May 25, 2004, butterfly needles and syringes were found in a bathroom at LACUMC. After audits of the Pyxis (a computerized medication system) were conducted, it was discovered that Respondent had withdrawn 2 vials of Meperedine and 4 vials of Morphine for patients who had no narcotic orders. Further, Respondent had not charted the administration of the medication in the patient's charts. It was subsequently discovered that Respondent had a total of 32 suspect Pyxis accesses during a one week period.

2. On May 26, 2004, Respondent was suspended pending an investigation of his narcotic discrepancies.

3. On June 10, 2004, Respondent stated to S.M., the Nurse Manager at LACUMC, that he had been diverting narcotics from the medical center for approximately four to six months.

**Possession of Controlled Substances:**

b. On or about and between approximately November 2003, and May 25, 2004, Respondent possessed unknown amounts of controlled substances, including Meperedine and Morphine, without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060, as further set forth in paragraph 13, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 589345, issued to Kevin William Kistler;

2. Ordering Kevin William Kistler to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 9/24/09

*Louise R. Bailey*  
LOUISE R. BAILEY, M.Ed, RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant